

21 December 2022



The Barossa Council

Mr John Stimson
Presiding Member
Expert Panel
Planning System Implementation review

DTI.PlanningReview@sa.gov.au

Dear Mr Stimson,

Submission to the Expert Panel – Planning System Implementation Review

Thank you for the opportunity to make submission to the Expert Panel in respect to the Planning System Implementation Review.

We would like to acknowledge the substantive reform to the planning system and while there has been many positive outcomes from the reform, we consider there is opportunity to improve the planning system and we have offered our recommendations for reform under the Expert Panel Terms of Reference headings below.

It is considered that the Expert Panel review has highlighted many matters in its discussion papers that are relevant and worth the support of Council.

Planning, Development and Infrastructure Act

Public Notification and Appeal Rights

Section 107(3) requires the Relevant Authority to notify adjacent land, which is defined as 60m. While the Relevant Authority must also give notice to members of the public by notice on the relevant land, experience is that the notice on the land and public notice within the SA Planning Portal may not reach all affected owners or occupiers, such that some development types warrant a greater level of notification by way of written notice. Examples are telecommunication facilities, development at an interface where the development may have impact beyond the 60m adjacent land or development within the Rural Zone where a notice on the land is not required. The provisions under the previous *Development Act 1993* for Category 3 development, for example, did provide discretion for Relevant Authorities to notify "any other owner or occupier of land....would be directly affected to a significant degree by the development if it were to proceed". (my underlining). This provision has merit and should be considered to provide obligation upon Relevant Authorities to broaden public notification to reflect the locality upon which the development will relate.

The Expert Panel is also encouraged to consider notification for development on the boundary, when deemed necessary, to be made only to the affected adjoining neighbour, so as to avoid unnecessary over notification, but to ensure targeted notification for the affected neighbour.



premium wine food tourism heritage lifestyle community

It is considered that third parties should have rights of appeal in some capacity to provide communities with opportunity to challenge decisions affecting them. The PDI Act 2016 has removed third party appeal rights and left communities with limited opportunities to challenge decisions that may have far reaching implications for them. Applications subject of public notification could be established as the basis upon which third party appeal rights exist where a representor has made a representation.

Appeal rights do provide a check and balance upon Relevant Authorities and experience working with the *Development Act 1993* is that third party appeal rights ultimately support enhanced laws and planning policies through continual evolution of the planning system by way of Court judgements. The learnings and experiences gained through such determinations inform better decision making by informing professionals working in the sector, to provide a basis for a more effective planning system.

Council Developments

Regulation 30 of the *Planning, Development and Infrastructure (Accredited Professionals) Regulations 2019* does have implications for Assessment Managers in their capacity to act as the Relevant Authority in cases where Council is the applicant. Regulation 30(1)(c) precludes an Accredited Professional from acting where the accredited professional is employed by any body associated with any aspect of the development. While many Council developments are subject to public notification, meaning the Assessment Panel can be assigned the Relevant Authority, some Council developments are excluded from public notification, such that the Assessment Manager will be assigned as the Relevant Authority. Regulation 30(2) should be amended to include "*an office or employee of a Council*".

Assessment Panels

It is recommended that the Expert Panel review the accreditation requirements in order to encourage greater diversity of Assessment Panel members. The Accredited Professionals does appear to have been a deterrent to allied professionals participating on Assessment Panels. Our experience is that there has been a resultant reduction in the pool of accredited professionals that are eligible to be appointed to Assessment Panels, which is impacting diversity of Assessment Panels. The Barossa Council supports diversity of members on Assessment Panels but due to the requirements under the Accreditation Professionals Scheme, Council can only appoint members that meet the accreditation requirements. It is noted that the Consultation Report released by the Accreditation Authority on 30 September 2022 has put forward Recommendation 11 to "*Consider a greater range of qualifications to be recognised for Planning Level 2 accreditation to help increase diversity of assessment panel members*". This recommendation is supported and the Expert Panel is encouraged to support this proposal.

Deemed Planning Consent

Council has considerable concern regarding the negative impacts the deemed consent option has introduced into the assessment of development. Deemed consents constitute a severe penalty for Relevant Authorities and work against the collaborative approach that Council seeks to achieve in working with applicants to achieve good development outcomes. Experience is that they result in a greater likelihood of applications being refused and they do not support a key object of the Act to promote *high standards for the built environment*. While Council recognises that Relevant Authorities must be accountable for timely decision making in development assessment, the clocks established within the Development Assessment Portal hold Relevant Authorities to account, such that Deemed Consents are considered an unnecessary penalty hanging over Assessment Managers.

Assessment Timeframes

It is recommended that assessment timeframes for more complex performance assessed development be increased. Performance assessed development (not subject to referrals or public notification) is 20 business days, but this timeframe does not account for the level of complexity involved in assessment. Ancillary residential development for example is allocated the same timeframe for assessment as a major commercial or industrial development. Our experience is that this timeframe has placed pressure on staff coordinating internal advice and in facilitating a robust and balanced assessment and Council has had to shift engineering resources to respond to the pressure of turn-around times. It is considered that a

more appropriate timeframe would be 8 weeks (40 business days) for non-residential development and non Class 1 or 10 development.

Infrastructure Schemes

It is agreed with the commentary within the Reform Options paper that the infrastructure schemes contained within the Act are too difficult and complex and are therefore not being effectively utilised. Council has typically relied upon deeds to facilitate infrastructure negotiation. With the timeframes prescribed within the Act, such negotiations are taking place at an early stage and require commitment from both parties to facilitate appropriate outcome. In addition, costings for infrastructure provision and structure planning for infrastructure designs should be resolved prior to rezoning. The Expert Panel is urged to undertake a comprehensive review of infrastructure schemes.

Council has prepared an accompanying submission regarding infrastructure schemes, which is attached, which further outlines our position in this matter.

Minor Variations

Section 106(2) of the *Planning, Development and Infrastructure Act 2016* does not provide adequate guidance to Relevant Authorities and is resulting in inconsistent approaches. Our experience is that Private Certifiers are also applying discretion to apply 'minor variation' for matters that are subject to planning judgement, which is not considered to be the intent of minor variations. It is suggested that 'minor variations' are either removed from the system or otherwise supported by greater guidance in the form of a Practice Direction for example. Another option could be that only Assessment Managers are given power to authorise a 'minor variation'. As a general principle, 'minor variations' should be confined to matters of a trivial nature and should not require an exercise of planning judgement or discretion, which is the role of Assessment Managers in granting performance assessed development. Where a 'minor variation' is made, it must also be clearly documented and appropriate justification made within the decision.

Form 1 – Section 7 Certificate

Under the *Land and Business (Sale and Conveyancing) Act 1994*, Council has a statutory obligation to provide information under Section 7 Certificate. The South Australian Government also provides information in accordance with a form (Property Interest Report).

Through the establishment of the SA Planning Portal, the Government holds information relating to planning and development. The SA Planning Portal has a report extract that Councils use to attach to their Section 7 certificate. This is a manual process and Councils have adopted differing interpretations of how this information is extracted and shared.

It is recommended that the South Australian Government provides all development application, zoning and code information under the *Planning, Development and Infrastructure Act 2016*, which would reduce the current need for Councils to download information from the SA Planning Portal to attach to the Section 7 Certificate.

It is appreciated that Councils are required to provide information under the *Development Act 1993* as well as Enforcement Notices issued under the *Planning, Development and Infrastructure Act 2016*.

Planning and Design Code

Planning Policy appropriate to the Barossa

Council supports the introduction of appropriate local policy that preserves and enhances local character that is unique to the Barossa. Recognising that the Barossa is the pre-eminent food and wine destination in South Australia, it is critical that planning policy is reflective of and supports this unique and special character. With the loss of local policy content that is reflective of the special character of the Barossa, there is risk that inappropriate development may erode this character.

To this end, Council has embarked on a proposal to strengthen the Character Preservation Overlay based on the considerable volume of work contained within the Barossa Valley and McLaren Vale

Character Preservation Addendum to the South Australian Planning Strategy. Council has received initial support from the State Planning Commission to initiate a Code Amendment in collaboration with PLUS and Council will be prioritising this piece of work in the new year.

Council acknowledges the initial support from the State Planning Commission and we seek support from the Expert Panel to support this reform to the Planning and Design Code.

Localised and nuanced policy

A substantive amount of local policy from the former Barossa Council Development Plan has not transitioned to the Phase 3 Planning and Design Code. While it is recognised that policy standardisation was a priority for the Planning Reform, substantive local policy content developed over many years by Council has been lost. Much of the local policy under the Development Plan provided explicit guidance of appropriate development outcomes, which was beneficial to applicants and planning practitioners. Greater uncertainty has resulted from removal of local policy due to reliance on standardised policy that is generic and not specific to local context.

Council would like to request support to work with Planning and Land Use Services (PLUS) to identify local policy content that can be reintroduced into the Planning and Design Code.

Outstanding Code omissions and anomalies

There is a list of outstanding planning policy omissions and anomalies for Barossa that have carried over from the Phase 3 Planning and Design Code implementation that should be prioritised in collaboration with PLUS. We would like opportunity to work with a case manager from PLUS to facilitate resolution of the outstanding issues that are yet to be prioritised.

Character and Heritage Reforms

Council broadly supports the State Planning Commissions proposal regarding ongoing protection and management of areas of character and streetscape value. Council has several existing Character Areas, one of which is in Angaston that was previously a Historic Conservation Zone within a former version of the Barossa Development Plan. Council will further consider option of transitioning these areas to Historic Areas under a Code Amendment at a later stage. In respect to the proposal to strengthen Character Statements within the Historic Areas, Council also supports the opportunity to review and enhance existing Character Statements.

Reintroduction of Desired Character Statements

Desired Character Statements do not exist within Zones or Sub-Zones under the Planning and Design Code. It is considered that Desired Character Statements should be reintroduced for Zones in the Planning and Design Code to provide clarity in relation to outcomes sought.

Increasing DTS and accepted development for lower end developments

Our experience working with the system is that there remains a number of relatively low value and lower risk developments assessed through a performance assessed pathway, because the accepted and DTS tables are too restrictive or because assessment tables have excluded the form of development, for example, due to Overlays. Another outcome is that with increased DTS provisions to account for soft landscaping, the level of assessment required by staff has increased to the point at which a performance assessment is undertaken because the list of DTS requirements are extensive.

An objective of the planning reform was to reduce the amount of lower value simpler applications moving through the system to improve the speed in which applications move through the system and to enable staff to prioritise more complex assessments. While there has been some progress in some areas under the Code, there is opportunity to review areas of the Code where the DTS and accepted assessment tables could be refined or simplified and to remove Overlay conflicts where they do not impact the development type.

The overall objective should be to increase the level of DTS and accepted developments for appropriate development types that are reasonable and expected. Examples in the Barossa are:

- Decks associated with dwellings on large properties within the Rural Zone and Rural Living Zone are not assigned an 'Accepted' or 'DTS' pathway;
- Masonry front fences (piers for example that are part of a front tubular fence) are not assigned an 'Accepted' or 'DTS' pathway;
- Increasing the 60m² 'DTS' limitation for garages, verandahs and outbuildings that are ancillary to dwellings on large allotments (600m² +).

Miscellaneous Issues

The following general issues are identified:

- While the Code is accessible online, our experience is that the community generally do not find the policy extracts easy to review and understand;
- The current Code Extracts are difficult to utilise for assessment. In this respect, the proposal to create the Code Rules as a Checklist is supported;
- There is a disconnect in some of the policy between that which is expressed within the Performance outcomes and the corresponding DPF. There are many examples where the DPF has no clear relationship to the Performance Outcome, thus leading to uncertainty when a DPF is met but the Performance Outcome is not. A review of the policy library is necessary to ensure DPF's correspond directly with the Performance Outcome sought.

E-Planning System and the Plan SA Website

Customer Experience

The *E-Planning System and the PlanSA Website discussion paper* identifies early recommendations to improve this service which is generally supported.

Feedback from customers is that the front-end Portal interface is not user friendly. Portal emails for example are generic and do not contain level of information to clearly communicate what the message means. Given that the system is generally not simple to use, customers often call Councils to request advice on how to navigate the system. Customers also email Council directly and this increases the resourcing necessary to support the system. One-off users do not necessarily require full access to the Development Assessment Portal and in this regard, the Expert Panel's option of not requiring a user login should be explored.

Document Management

The Planning Portal does not incorporate a robust and contemporary document management system. Managing the flow of plans and editing of versions of plans is cumbersome and creates an inherent risk in incorrect plans being stamped or approved due to error. Registering of emails within the documents is also cumbersome as a drag and drop solution from Outlook into the Portal does not exist. Review of how documents are managed within the system is recommended.

Due to the limited capacity of the system to accommodate documents, Councils have continued to operate their own document management systems and the overlap of documents between the two systems has implications for Freedom of Information requests and who is responsible for management of such records. This has also meant Council has not realised the savings originally indicated from the planning reforms by having to duplicate its records management system.

It is understood the SA Government is seeking advice on the legislative responsibilities for management of documents moving forward and the implications for Freedom of Information requests.

Complexity of Portal

The Development Assessment Portal is too complex to facilitate fast processing of simpler development applications. The Portal does accommodate for the most complex of applications but this is at the expense of efficiency for 80% or more of simpler applications which do not rely upon the full functionality of the Portal. A simpler structure is appropriate for less involved applications. The number of start and stop points is a significant constraint on the efficiency of applications and is creating a lot of inefficiency

within the system. It is agreed with the Expert Panel's proposal to look at ways to improve efficiency such as concurrent planning and building assessment and removal of the Building Consent verification.

Dashboards and Reporting

The present dashboard does not provide an effective management interface for Assessment Managers and planners to track and manage their workloads. The dashboard does not provide for a simple inbox to capture and track incoming work and the tabs within the dashboard are not intuitive and do not enable applications to be prioritised and captured. The dashboard also cannot be toggled or filtered within the pages, for example, to turn on or off Building Consent applications. Staff have therefore often resorted to running their own spreadsheets to track their applications, which is a duplication of effort.

The proposal of the Expert Panel to develop a new user interface is supported.

There are a substantial number of Power BI reports within the Planning Portal. Some of the reports have been found to contain errors within the data as the data does not correlate with other similar Power BI reports. This has created some uncertainty regarding the reliability of data contained within the system. PLUS are prioritising resources to enhance the existing Power BI reports and this proposal is supported.

Building Notifications

A significant challenge within the current system are Building Notifications. The Expert Panel has identified the current system limitation that notifications and inspection results can only be submitted through the DAP on a desktop computer. Our experience is that many applicants prefer to notify Council outside the Portal which has placed the obligation on Council to then complete the notification. It is considered that the most effective way to increase the uptake of notification is to make the process simple and this could be achieved through an app using a mobile device, without needing a user login, which is a recommendation put forward to the Expert Panel.

It is also agreed that Inspection clocks are necessary to support the real time tracking of building notifications, in order to report on Councils performance pursuant to Practice Direction 9.

The Barossa Council wish the Expert Panel well with its deliberations and we look forward to receiving feedback in respect to its future recommendations to the Minister for Planning.

Yours Sincerely,



Martin McCarthy
Chief Executive Officer



21 December 2022

Mr John Stimson
Presiding member
Expert Panel
Planning System Implementation Review

DTI.PlanningReview@sa.gov.au

Dear Mr Stimson,

Submission to the Expert Panel regarding Infrastructure Schemes – Planning System Implementation Review

This submission regarding infrastructure schemes accompanies the main submission from Council to the Expert Panel, dated 21 December 2022.

Planners from Councils of Adelaide Plains Council, Town of Gawler, Light Regional Council, City of Onkaparinga, City of Playford, City of Salisbury, Mount Barker District Council, Barossa Council have come together to provide a joint response regarding the need to establish workable infrastructure schemes for large and complex land developments. We agree with the Expert Panel that as provided in the *Planning, Development and Infrastructure Act 2016* (the Act) the General and Basic Scheme would be overly complex and difficult to work with, if operatable at all. Two quotes from the Expert Panel Discussion Paper are illuminating:

*"The provisions regarding general infrastructure schemes have **not yet** commenced and before they have commenced, the Commission must conduct an inquiry into the schemes in relation to the provision of essential infrastructure under Part 13 of the PDI Act, and a report on the outcome of the inquiry must be laid before both Houses of Parliament (pg. 31)".*

This is a very concerning delay in the provision of essential infrastructure, which in turn would be a drag on project implementation and overall economic development. Despite the PDI Act being in place since 2016. The Discussion Paper also highlights the complexity of managing these infrastructure projects:

*"The legislative provisions surrounding infrastructure schemes under the PDI Act are **far more detailed and complex** than the legislative provisions in most other jurisdictions (pg. 33)".*



premium wine food tourism heritage lifestyle community

Councils have responded to this legislative and policy gap with local developer contributions schemes using Land Management Agreements, Deeds and Infrastructure Agreements to levy Separate Rates on properties once they reach a development trigger. These schemes in themselves are complex and require individual tailoring of legal advice and agreements. They involve extensive staff resources in the development of proposals, gaining cooperation of landowners and levying of the separate rate.

An alternative solution to Land Management Agreements and Separate Rates is necessary to enable the development of the State's strategic growth areas. The solution needs to work for these areas because they require co-ordinated infrastructure delivery and rezonings where not all landowners are in agreement and where the infrastructure provision may have a long horizon and several providers.

We strongly believe based on our combined experiences there must be a whole of government approach, requiring all relevant parties to come together to discuss and ultimately agree to revised schemes for infrastructure requirements, its delivery and funding. The Councils agree with the State Government position that infrastructure delivery must be resolved prior to the commencement of the Code Amendment.

Given the need to expedite development in South Australia a simpler system can be developed. The Councils who have collaborated to develop this paper contend that this lack investment in infrastructure is delaying infrastructure projects from housing to employment lands and hence holding up both orderly and economic development.

Infrastructure Schemes should be clear and straightforward in what they need to achieve based on the following principles - **strategic, equitable, sustainable and best practice, adaptive, and economical**

Within the Discussion Paper – *Planning, Development and Infrastructure Act 2016 Reform Options*, we note the Jurisdictional Comparison and consider there is substantial merit in further exploring alternative legislative provisions noting there is support within this group for a similar approach taken by the Victorian Planning Authority. It is noted that the State of Victoria has been operating a Developer Contributions Scheme since 2003.

We have been asked to respond to the following questions on Infrastructure Schemes posed by the Expert Panel:

1. *What do you see as barriers in establishing an infrastructure scheme under the PDI Act?*

Response

- Acknowledging that one of the schemes is not operational, the schemes are overly complex with numerous decision-making points by different owners.
- Councils are concerned that most of the decision making, and control comes from the State Government when Local Government has the knowledge, links to the community and current and future ownership of most of the infrastructure.
- The schemes provide no guidance on where the upfront investments will come from.

2. *What improvements would you like to see to the infrastructure scheme provisions in the PDI Act?*

Response

- It is considered the issues identified in question 1 plus the recommendations in questions 3 should be considered.
- In addition, councils would like the definitions of infrastructure to be reviewed to incorporate open space.
- The Act should be amended to ensure Structure Planning of growth areas with infrastructure designs and costings occurs prior to the rezoning process.
- The Act needs to require that the State Government provides for an effective whole of government infrastructure co-ordination that aligns with Regional Plans, including funding mechanisms for infrastructure agencies. It is difficult for councils to engage with infrastructure providers (e.g. SA Water and the Department for Education) at the strategic planning and rezoning stages. Agencies need to be committed to providing services to facilitate and support development opportunities.

3. *Are there alternative mechanisms to the infrastructure schemes that facilitate growth and development with well-coordinated and efficiently delivered essential infrastructure?*

Response

The Victorian system has been identified as having a better infrastructure model and provides an example of measures that could be adapted to South Australia such as:

- Predetermined costs for various types of infrastructure, with the ability to alter the agreed cost when identified in a structure plan.
- A State infrastructure fund to pay for infrastructure prior to development proceeding and costs being recouped.
- A minimum requirement that 10% of land is allocated towards key infrastructure at the structure planning stage.

Yours Sincerely,


Martin McCarthy

Chief Executive Officer

